

October 2016 Torts Question # 3

1. Is Moe likely to prevail on a negligence claim against Barry? Discuss.

Negligence

Negligence requires a showing that a duty was owed, that the duty was breached, and that the breach was the actual and proximate cause of damages.

Duty

A duty to act as a reasonable prudent person under the same or similar circumstances.

Barry, as a licensed barber owes a duty to properly shave his customers and to act reasonable in a situation where the customer moves while being shaved and to act as a reasonable prudent person would do under the same or similar circumstances.

Therefore, Barry owes a duty of due care to his customer, Moe.

Breach

A breach is a failure to act as a reasonable prudent person under the same or similar circumstances.

Barry considered changing from a straight razor that he has always used to the new type electric razor. However, using a straight razor versus an electric razor allows for a closer shave. But the new razors have been scientifically established to prove that the electric shaver gives just as close of a shave. However, using the straight razor allows the barber to better show off their skills as a barber.

Barry continued to use the straight razor because he enjoys the use of the blade, and the electric razor is very expensive. While shaving Moe, halfway through the shave Moe suddenly jumps up from the chair, cheering because he checked his Smartphone and saw his favorite baseball team score a run. Upon jumping up Barry cut Moe and made a deep gash on his throat. If Barry would have been using the electric razor, Moe would not have been cut. Thus, Barry's conduct of cutting Moe and making a deep gash on his throat establishes he fell below the reasonable person standard of care.

Barry will contend he was acting reasonable as Moe jumped out of the chair, which caused him to get cut. However, a reasonable barber would anticipate movement from a customer and should advise the customer to remain still especially while shaving a vulnerable area.

Therefore, Barry breached his duty owed to Moe.

Actual Cause

"But for" not making it clear to Moe to sit still during his shave, and cutting a deep gash on Moe's throat, Moe would not have been injured.

Thus, Barry is the actual cause of Moe's injuries.

Therefore, Barry is the actual cause of Moe's injuries.

Proximate Cause

Barry will argue it is not foreseeable that Moe would jump out of his chair while he was getting a shave that resulted in him getting cut.

However, it is foreseeable while shaving a customer that the customer may move while the shave is in process and become injured. In addition, it is foreseeable that a barber using a straight edge who is not being careful during the shaving of his customer would cut his customer. Barry should be more aware of his customers and warn them that he needs them to remain still in order to prevent any accidental cuts on their face.

Therefore, Barry's conduct was the proximate cause of Moe's injuries.

General Damages

General damages are damages that reasonably or naturally flow from the tort and they do not need to be specifically pleaded. General damages allow recovery of compensation for pain and suffering.

Moe should recover for any damages which reasonable and naturally flow from Barry's tortious conduct, which would include the pain and suffering damages he sustained.

Therefore, Moe will be entitled to general damages.

Special Damages

Special damages are those damages unique to Plaintiff and they must be specifically pleaded and proved. Further, special damages must be foreseeable, reasonable in amount and not too remote.

Moe should receive damages for any medical expenses and lost wages resulting from Barry's act.

Defense - Contributory Negligence

In a contributory negligence jurisdiction, conduct of plaintiff which falls below the reasonable person standard of care is a complete defense to a negligence cause of action.

Barry will argue that Moe's conduct of jumping up out of the barber chair while receiving a shave constituted negligence, in part because Moe knew that Barry was using a straight edge razor to shave his face. If Moe did not jump out of the chair he would not have been cut and sustain injury.

Thus, Moe should be held accountable for his own injuries.

Therefore, contributory negligence is a valid defense.

Last Clear Chance

If the court finds that Moe did contribute to his injuries he will argue the “last clear chance” doctrine to overcome Barry’s contributory negligence defense.

To avoid the harsh effect of plaintiff’s contributory negligence, some jurisdictions will hold that a Plaintiff is not barred from recovery where a defendant had the last clear chance to avoid the accident just before it occurred, but failed to do so.

It appears from the facts that Barry could have taken precautions to prevent Moe from being cut with the straight razor. Further, he could have told Moe about the need for him to remain still during the shaving process in order to get a close and cut free shave.

Hence, Barry had the last clear chance to avoid the accident if he would have either warn Moe of the potential danger, or use an electric razor.

Thus, Barry had the last clear chance to prevent Moe’s injury.

Defense - Comparative Negligence

In other jurisdictions where plaintiff’s conduct falls below the standard of reasonable care including the amount of plaintiff’s negligence, will be apportioned according to fault.

Barry will argue if the court finds Moe’s conduct fell below the standard of care owed, the court will apportion his own fault against Moe’s and render judgment accordingly.

Therefore, comparative negligence is a valid defense.

Assumption of Risk

One, who assumes the risk when he has knowledge, comprehension and an appreciation of the danger and voluntarily elects to encounter it, cannot recover for injuries or damages resulting from defendant’s negligence.

Since Barry did not give any warnings of the potential harm related to using a straight edge to shave Moe’s face, Moe did not have any knowledge or comprehension of the danger. Since Moe had no knowledge of the danger associated with a shave, he did not voluntarily elect to encounter the injury of being cut in the throat getting a deep gash. Therefore, Moe did not knowingly and voluntarily assume the risk.

Therefore, assumption of the risk is not a valid defense.

2. Is Barry likely to prevail on a Battery claim against Moe? Discuss.

Battery

Battery is the intentional, harmful or offensive touching of another.

Moe’s conduct of punching Barry in the face giving him a black eye shows he was substantially certain to cause Barry harm. Thus, Moe’s actions were intentional.

Moe punched Barry in the face giving him a black eye. Thus, Moe's act of punching Barry was harmful and offensive to Barry.

Since Moe punched Barry in the face there was a touching of another.

Thus, it appears Barry does have a claim for battery against Moe.

General Damages

Defined supra.

Barry should recover for any damages which reasonable and naturally flow from Moe's tortious conduct which would include pain and suffering,

Therefore, Barry will be entitled to general damages.

Special Damages

Defined supra.

Barry should receive damages for any medical expenses and/or lost wages resulting from Moe's act.

Therefore, Barry is entitled to special damages.

Punitive Damages

Punitive damages may be awarded where there was intent to injure or harm plaintiff.

As discussed, since Moe committed a battery against Barry, he acted with the intent to cause injury to Barry.

Therefore, Barry will be entitled to punitive damages from Moe.

Self Defense

One may use reasonable force to protect one's self, which may rise to deadly force if in reasonable belief that your life is being threatened.

Moe will argue he was reasonably and truly afraid when Barry cut his throat with a straight edge razor. However, the fact is Moe jumped out of his seat that resulted in Barry cutting his throat. Punching Barry in the face was not reasonable force to protect himself, since the incident was caused by his own actions and the negligent isolated act of Barry.

Thus, since Barry's actions were based on negligence, Moe does not have a claim for defending himself.

Therefore, self defense is not a valid defense.